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ASSIGNMENTS OF LIFE INSURANCE POLICIES.

POLICIES of life insurance are assignable equally with other choses in action, and derive much of their utility and value from such element of assignability: *Olmsted v. Keyes*, 85 N. Y. 593; *St. John v. Am. Mut. Life Ins. Co.*, 13 Id. 3, 31. Such policy is a writing obligatory for the payment of a certain sum of money at a future time, with a right of action against the company issuing the same upon the happening of the contingency upon which such payment depends: *Chapman v. McIlwraith*, 77 Mo. 38; *Mut. Life Ins. Co. v. Allen*, 138 Mass. 24. As a non-negotiable chose in action, an assignee thereof can acquire no greater rights than his assignor had: *Gilbert v. Moose*, 104 Penn. St. 72; and is subject to all equities existing at the time of transfer, and all defences valid as between the original parties: *Harley v. Heist*, 86 Ind. 196. Nor can an assignee acquire any greater rights than are given by the instrument itself: *Diffenbach v. Vogeler*, 61 Md. 370; and the general words of an assignment are restricted by the particular words of the policy itself: *Armstrong v. Ins. Co.*, 20 Blatchf. 493.

It is also true, however, that such assignment carries with it every incident or accessory essential to the use or enforcement of the policy transferred, or that will conduce to the attainment of the end and purpose in view of the parties to the assignment: *Hollis v. Ins. Co.*, 12 Phila. 321. And, by reason of the affirmative acts, omissions or neglects of the owner or assignor of a policy, a *bona*

fide assignee thereof for value, without notice, may acquire, under the rules of equitable estoppel, a good title against all the world : *Norwood v. Guerdon*, 60 Ill. 253 ; *Wells v. Archer*, 10 S. & R. 412 ; *Damron v. Penn Mut. Life Ins. Co.*, 99 Ind. 479 ; *Ætna Life Ins. Co. v. France*, 94 U. S. 561 ; *Hall v. Dorchester*, 111 Mass. 53 ; *Gale v. Lewis*, 9 Q. B. 742.

Life insurance policies are assignable by parol and mere delivery : *West v. Carolina Ins. Co.*, 31 Ark. 476 ; *Soule v. Union Bank*, 45 Barb. 111 ; *Malone's Estate*, 8 W. N. C. 179 ; *Chapman v. McIlwraith*, 77 Mo. 28 ; *Stout v. Yeager Co.*, 13 T. R. 802 ; *Marcus v. St. Louis Mut. Life Ins. Co.*, 68 N. Y. 625 ; *Griffey v. Ins. Co.*, 30 Hun 299 ; *Ins. Co. v. Kelly*, 32 Md. 421 ; *Hudson v. Merrifield*, 57 Ind. 24 ; *Moore v. Woolsey*, 4 E. & B. 243 ; *Jones v. Consolidated Ins. Co.*, 2 Beav. 256 ; *Durfaur v. Professional Ins. Co.*, 25 Id. 603 ; *Hart v. Forbes*, 60 Miss. 745 ; *Williams's Appeal*, 10 Out. 116. Possession of a policy is *prima facie* evidence of title, and of the right to demand and receive of the insurance company the money due thereon at the time when by its terms it is contracted to be paid : *Page v. Burnstine*, 102 U. S. 664 ; *Armstrong v. Ins. Co.*, 20 Blatchf. 493 ; *Collins v. Dawley*, 4 Col. 138. Lord MANSFIELD says, "it gives a lien at law : " *Godin v. L. Assur. Co.*, 1 Burr. 489. Any act on the part of the owner of an insurance policy showing not only a present intention to transfer, but that he regards himself as having carried that transfer into effect, is sufficient to constitute an assignment : *Swift v. Ry. Conductors' Mut. Ass'n*, 96 Ill. 309 ; *Chowne v. Baylis*, 31 Beav. 351 ; *Malone's Estate*, *supra* ; *Wood v. Phœnix Ins. Co.*, 22 La. Ann. 617. An equitable title to policies can be acquired without any formal writing, such being the mutual intentions of the parties : *St. John v. Am. Life Ins. Co.*, 13 N. Y. 31 ; *Marcus v. St. Louis Mut. Life Ins. Co.*, 68 Id. 625 ; *Malone's Estate*, 8 W. N. C. 179 ; *Cook v. Black*, 1 Hare 390. The assignability of policies is generally declared by the terms thereof : *Pomeroy v. Manhattan Life Ins. Co.*, 40 Ill. 398 ; *Mutual Protection Ins. Co. v. Hamilton*, 5 Sneed 269. They are usually made payable to the beneficiary "or assigns." The policy, when made so payable, is generally rendered more available as security by indorsement as well as delivery : *Shearman v. Niagara F. Ins. Co.*, 46 N. Y. 526 ; *Merrifield v. Baker*, 11 Allen 43 ; *Collins v. Dawley*, 4 Col. 138 ; *Durfaur v. Ins. Co.*, 25 Beav. 599. But a policy is assignable

although not made payable "to assign :"
Archibald v. Mut. Life Ins. Co., 38 Wis. 542; *DeRonge v. Elliott*, 23 N. J. Eq. 486. An indorsement in blank is sufficient to pass the title, as by such indorsement is implied an express or implied authority from the party signing to the person to whom it is delivered to fill up the blanks in accordance with the intentions of the parties; for where a party has power to do a thing, and means to do it, the instrument he employs is to be construed so as to give effect to his intention: *Norwood v. Guerdon*, 60 Ill. 253; *Fowler v. Butterly*, 78 N. Y. 68; *Lemon v. Phœnix Mut. Life Ins. Co.*, 38 Conn. 294; *Bond v. Bunting*, 78 Penn. St. 213. Otherwise, where such blank assignment is obtained by coercion: *Whitridge v. Barry*, 42 Md. 140. An assignee of the insurance policies, requiring indorsement as well as delivery to perfect the legal title, and deposited as collateral upon an agreement to execute such indorsement, the assignor dying before complying with such agreement, will be aided in equity by a decree against the company for the payment of the amount due on the policy, with interest, without a formal assignment: *Curtius v. Caledonian Ins. Co.*, L. R., 19 Ch. Div. 534; *Crossley v. Glasgow Life Ins. Co.*, 4 Id. 421; *Webster v. British Empire Life Ins. Co.*, 15 Id. 169. No title, however, can be acquired to policies although assigned by endorsement and delivery by both husband and wife, where made payable to a wife or to wife and children, or to minor children, in jurisdictions where such assignments are prohibited by statute, or held to be against public policy: *Chapin v. Fellowes*, 36 Conn. 132; *Knickerbocker Life Ins. Co. v. Weitz*, 99 Mass. 157; *Borroughs v. State Mut. Life Ins. Co.*, 97 Id. 359; *Mutual Life Ins. Co. v. Applegate*, 7 Ohio St. 292; *Bond v. Ins. Co.*, 9 Phila. 149; affirmed 78 Penn. St. 213; *Turner v. Quincy Ins. Co.*, 109 Mass. 573; *Ricker v. Oak Life Ins. Co.*, 27 Minn. 193; *Pence v. Makepeace*, 65 Ind. 345; *Glanz v. Gloeckler*, 104 Ill. 573; *Mallory v. Travellers' Ins. Co.*, 38 N. Y. 294; *Stokell v. Kimball*, 59 N. H. 13.

Delivery of the policy is essential to the validity of an assignment. It may be by some act or conduct, which at law or in equity will be regarded as a substantial compliance with the rule; *Fowler v. Butherby*, 78 N. Y. 68; *Conard v. Ins. Co.*, 1 Pet. 449; *Lemon v. Phœnix Ins. Co.*, 38 Conn. 294; *Pence v. Makepeace*, 65 Ind. 345; *Wood v. Phœnix Life Ins. Co.*, 22 La. Ann. 617. So notice to the company of an assignment without possession, will sustain

an assignment; *Palmer v. Merrill*, 6 Cush. 282; *Chowne v. Baylis*, 31 Beav. 35. The rule was applied to a creditor, who promised an insurance policy as collateral, failed by negligence to obtain it before the death of his debtor: *Suc. of De Meza*, 26 La. Ann. 35. And a prior assignee with possession is preferred in equity: *Diffenbach v. Vogeler*, 61 Md. 370; *Spencer v. Clarke*, L. R., 9 Ch. Div. 137. But where a policy was deposited as security, without notice to the company, and the insured, by false representations, obtained a duplicate copy and assigned it by deed to his wife, it was held that if the wife took the assignment without notice of the fraud, she had a legal right and equity superior to that of the first assignee: *Le Feuvre v. Sullivan*, 10 Moore's Pr. C. C. 1; *Spencer v. Clarke*, L. R., 9 Ch. Div. 137. Consent of the assignee, however, to the assignment, is requisite to its validity, where delivered to a third party not an agent of the assignee for any purpose: *Hart v. Forbes*, 60 Miss. 745; *Suc. of Richardson*, 14 La. Ann. 1. Policies delivered to an assignee as security for advances less in amount than the value of the policies, may be assigned for other loans upon notice to the first assignee, and such assignment is sustained as an equitable appropriation of any surplus to the benefit of the second or later assignee: *Marts v. Ins. Co.*, 44 N. J. L. 478; *Diffenbach v. Vogeler*, 61 Md. 370; *City Bank v. Ass. Co.*, 32 W. R. 658; *Myers v. Guarantee Co.*, 7 DeG., M. & S. 112. Assignments of part interests in policies are sustained as vesting an equitable right therein: *Palmer v. Merrill*, 6 Cush. 282; *Pomeroy v. Manhattan L. Ins. Co.*, 40 Ill. 398; especially if the company consents: *Woods v. Rutland Mut. Fire Ins. Co.*, 31 Vt. 552. It was doubted, however, whether an assignment, *qua* assignment, was sufficient to pass the title where a policy had been made payable to the person upon whose life it was taken out, and upon delivery of the policy, at his request, the agent of the company immediately made an assignment thereof to a third party, a copy of which was sent to the general office, but none to the assignee, and no notice was ever given to him, the assignor retaining the policy and paying the premiums until the day of his death: *Scott v. Dickson*, 16 W. N. C. 181. But, in a like case, where a policy was made payable to B., but was retained and the premiums paid by A., B. being ignorant of the transaction, and A. afterwards sought to change the policy so as to make it payable to himself, but the company refused without the consent of B., the court held that it had no power to

compel B. to assign the policy; *Potter v. Spilman*, 117 Mass. 322.

The Title of the Assignee.—The assignment of an insurance policy as collateral security upon a valuable consideration, vests in the assignee the legal title to the securities, and entitles him to enforce the same, holding any surplus after payment of the loans, interest, premiums and assessments paid, for the benefit of the parties equitably entitled to the same: *Harrison v. McConkey*, 1 Md. Ch. Dec. 34; *Scobey v. Waters*, 10 Lea 555; *Gilman v. Curtis*, 14 Ins. Law J. 15; *Armstrong v. Ins. Co.*, 20 Blatchf. 493; *McCord v. Noyes*, 3 Bradf. 139. The assignor, retaining only an equitable interest in the securities, while he may be a proper party to a suit to enforce the same, is not allowed to prosecute it as the sole plaintiff: *Texas Ins. Co. v. Coffee*, 61 Tex. 287. Nor will a court enforce the surrender of the policy to the assignor, nor permit a collection of the amount due thereon from the insurance company, until the advances and payments made to preserve the policy are repaid: *Gilman v. Curtis*, *supra*. The *bona fide* assignee of insurance policies for value, without notice of equities, is protected under the rules of equitable estoppel, as where a policy of insurance was pledged for an advance but the assignee permitted the policy to remain in the hands of the assignor, who was thus enabled to assign it to an innocent person who advanced a valuable consideration upon its endorsement and delivery. The latter was held to have not only the legal title, but the superior equity: *Wells v. Archer*, 10 S. & R. 412; *Le Feuvre v. Sullivan*, 10 Moore's Pr. C. C. 1; *Spencer v. Clarke*, L. R., 9 Ch. Div. 137. A wife, as beneficiary, executed a blank endorsement of a policy, and it was negotiated for value to an innocent holder. The wife sought to defeat the title of the assignee. The court said, "By placing her name on the back of the policy, at the request of her husband, and delivering it to him, she thus enabled him to procure the loan of money, and it would be opening the door to fraud to permit the wife to deny the power of the husband to fill up the assignment: *Norwood v. Guerdon*, 60 Ill. 253; *Pomeroy v. Man. Ins. Co.*, 40 Id. 398; *Damron v. Penn Mut. Life Ins. Co.*, 99 Ind 479. So a company may be estopped by the admissions of its authorized agent, that a certain policy will be paid, where an innocent person advances money upon an assignment of such policy, relying upon such representations: *Ætna Life Ins. Co. v. France*, 94 U. S. 561. And a com-

pany is estopped after notice of an assignment to set up as a defence against a *bona fide* holder for value, that it paid the proceeds of the policy to the beneficiary or any other person : *Hall v. Dorchester Mut. Ins. Co.*, 111 Mass. 53 ; *Gale v. Lewis*, 9 Q. B. 742. But notice must be proved : *Northwestern Mut. Life Ins. Co. v. Roth*, 87 Penn. St. 409. And also, where it has consented to an assignment, to deny the validity thereof, as against a *bona fide* holder for value : *Ætna Life Ins. Co. v. France*, 94 U. S. 561 ; *Stevens v. Warren*, 101 Mass. 564 ; or to set up a prohibition in the policy against assignments without the consent of the company where made as collateral, or where the interests of the company are not affected : *Ellis v. Krentzinger*, 27 Mo. 311 ; *Griffey v. Ins. Co.*, 30 Hun 299 ; *Ins. Co. v. Kelly*, 32 Md. 421 ; *St. John v. Ins. Co.*, 13 N. Y. 31 ; nor where such clause is illegal : *Spare v. Ins. Co.*, 17 Fed. Rep. 568.

And where a policy was allowed by a company to lapse and be forfeited, but without the consent or knowledge of the beneficiary, and a new policy, issued in place thereof, was assigned as collateral to a *bona fide* assignee for value, the company was estopped as against the beneficiary from alleging her neglect to tender premiums due on a policy already forfeited ; and also estopped as against the innocent assignee, from setting up the defence that an assignee of an insurance policy could acquire no greater rights than those of his assignor : *Pilcher v. New York Ins. Co.*, 33 La. Ann. 322. And where a person seeking insurance makes a full and complete statement of all facts that materially affect the risk, and an agent of the company, acting on its behalf, of his own accord, writes false answers to the usual questions, to be signed by the applicant, with the advice to him that the omitted facts are immaterial, and the assured, in good faith, adopts the application as prepared, the company is estopped to deny its liability on the policy, after receiving premiums, a loss having occurred : *Massachusetts v. Mut. Life Ins. Co. v. Robinson*, 98 Ill. 324. Nor can an insurance company acquire any rights against a *bona fide* holder by mis-statements of facts and law made by its agents in its company's business relative to a forfeiture of a policy : *Tabor v. Michigan Mut. Life Ins. Co.*, 44 Mich. 324. But unauthorized representations of an agent will not create an estoppel : *Knight v. Mut. Life Ins. Co.*, 37 Leg. Int. 82.

The title of the assignee of an insurance policy being non-nego-

tiable in its character is, in the absence of any application of the rules of equitable estoppel, subject to all equities existing at the time of the transfer and to all defences valid as between the original parties. A valid policy was issued to a wife, and afterwards, by coercion, she executed an assignment of it, and the fraudulent assignee assigned it to a *bona fide* purchaser, without notice; it was held that no title could be acquired even by an innocent purchaser to a chose in action from one who has procured it from the owner by undue influence, compulsion or coercion: *Barry v. Equitable Life Ins. Co.*, 59 N. Y. 587. The assignee must, like other assignees of non-negotiable choses in action, inquire of the debtor, before advancing money, if any defence or equities exist in relation thereto, as a policy of insurance is not a representation of the company, but only a muniment of title, and no title can be acquired even by a *bona fide* assignee for value from one without title obtaining the same from a fraudulent agent: *Charter Oak Life Ins. Co. v. Smith*, 40 Ohio St. 414. And a rule that an assignee cannot rely upon the recitals of an insurance policy, was enforced in a case where by failure of an assignee to pay a premium note, although the policy recited that it was paid, a forfeiture thereof was sustained. *How v. Union Mut. Life Ins. Co.*, 80 N. Y. 32. Nor can an assignee of a policy as collateral require payment without complying with the terms of the policy by obtaining the receipt of the beneficiary indorsed thereon; *non constat* the debt may have been paid: *Kelley v. Caplice*, 23 Kan. 474. Nor can he rely upon unauthorized representations of an agent: *Knight v. Mutual Life Ins. Co.*, 37 Leg. Int. 82. Nor can any title be acquired to policies of life insurance where illegal although the loans and debts secured be larger in amount than the value of the policy: *Stokell v. Kimball*, 59 N. H. 13; and an assignment of policies by a wife as surety will be released by a discharge of an endorser: *O'Mara v. Nugent*, 37 N. J. Eq. 326.

The Rights of the Assignor.—The assignor or pledgor is entitled to a return of insurance policies upon complying with the terms of the agreement upon which such assignment was made. Although the assignment be absolute in terms, an agreement in parol that the assignor should have a right to redeem at any time upon repayment, with interest, of the premiums paid by the assignee, will be enforced in equity. Such right of redemption followed the policy into the hands of the assignee, and at all times affected his title:

Matthews v. Sheehan, 69 N. Y. 589. The rule was enforced in another case where an insurance policy was assigned in absolute terms, but the assignee (who was the agent of the company issuing the policy) delivered a receipt at the same time reciting that the assignment was as collateral security for the premium, and to be void if the note was paid at maturity, otherwise to continue for sole benefit of the agent. The company was notified of the assignment, but not of the receipt, and the note not being paid, the agent surrendered the policy. Prior to the surrender the company were informed of the facts, the assignor demanding a retransfer, the policy being of greater value than the amount of the note. Upon an equitable action to redeem, it was held that as no notice had been given to redeem before the surrender, it must be treated as made on account of the assignor as well as the assignee, and that he was entitled to any excess of value above the amount due on the premium note: *Dongan v. Mut. Ben. Life Ins. Co.*, 46 Md. 469. So, where an assignee of a policy holding the same as collateral security wrongfully surrendered it to the company, he was mulcted in damages for the conversion: *Wheeler v. Peters*, 40 Ohio St. 424. The pledgor is also entitled upon settlement to the benefit of any sums which have been collected by the pledgee on such insurance policies, and to which the assignor would be entitled on payment of the debt: *White v. British Empire Ins. Co.*, L. R., 7 Eq. 394.

Payment of the debt or the discharge of the obligation is essential to entitle the assignor to a return of collateral securities, as where policies of insurance were assigned as collateral security to secure the payment of certain bills of exchange, although an arbitration has fixed the amount of the account, the money not having been paid: *Scott v. Campbell*, 1 Camp. 216. And where assurance policies were assigned as collateral for the payment of a bond and mortgage, and the mortgage had been discharged, but the bond not paid: *Hollis v. Ins. Co.*, 12 Phila. 321. Nor can an assignor, who during minority as a beneficiary joined with his father in an assignment thereof as collateral to secure the assignee from liability as endorser, and under which the assignee had been obliged to pay a portion of the liability, repudiate the contract on coming of age, and recover the policy, during the lifetime of the assured, by an action of detinue: *Bowers v. Parker*, 58 N. H. 565. But it was held payment where a company issuing a policy

received it and other securities as collateral for the payment of premium notes, the policy by its terms being void if the assured died by his own hands, except as to any *bona fide* interest therein at the time of death. The company was held within the rule, and the proceeds of the policy having paid the debt, it was ordered to redeliver the other securities: *White v. Penn Mut. Life Ins. Co.*, 6 Mo. App. 587. And a deposit of policies as collateral was held within the exception: *Cook v. Black*, 1 Hare 390. Nor was it any defence to a suit upon the original indebtedness that the creditor held an insurance policy upon the life of the debtor as collateral: *Reeves v. Plough*, 41 Ind. 204; *Burrows v. Bangs*, 34 Mich. 304.

Insurable Interests as applied to Assignees.—An important question relative to the assignment of valid life insurance policies is, as to the intention of the parties in procuring such insurance, whether it is in fact a *bona fide* assignment, for a valuable consideration, or simply a cover for a gaming speculation in the life of the insured, and in arriving at such intention the extent or character of the insurable interest of the assignee in the life, is a fact for consideration: *Johnson v. Van Epps*, 14 Ill. App. 201. Generally, it may be said, that an assignee of valid insurance policies, in common with assignees of other *choses in action*, is entitled to the presumption that he is a *bona fide* holder for value, without notice: *Page v. Burnstine*, 102 U. S. 664. The fact that he has no insurable interest in the life of the assured does not create a presumption that he acquired his interest under such assignment for the purpose of speculating or gambling upon the life of the assured: *Clark v. Allen*, 11 R. I. 439. Nor is this fact either conclusive nor *prima facie* evidence that the transaction is illegal: *United Life Ins. Co. v. Allen*, 138 Mass. 240. No subsequent assignment can destroy the validity of a policy that was legal when issued: *Campbell v. New England Life Ins. Co.*, 98 Mass. 381; nor taint it as a wagering policy: *Mut. Life Ins. Co. v. Allen*, 50 Id. 18. Even where made the basis of a mere speculation or wager on the part of the assignee, so that no recovery is permitted to him, yet the beneficiary of the policy may enforce the same, the validity of the policy not being affected by the subsequent illegality. And unless there is some peculiarity about the rules that should govern the assignment of policies of insurance, where the assignee has no insurable interest in the life of the assured, the same rules as to its validity should

govern such assignments as are applied to assignments of interests under wills and vested remainders: *In re Irving*, L. R., 7 Ch. D. 419. In all these cases, although the value of the investment depends upon the life of a person in which the assignee has no interest except the expectancy of its cessation, the validity of such assignments is not questioned.

The courts have considered in several cases this question of the insurable interest required by the assignee to render valid an assignment of life insurance policies, and the general rule seems to be that such assignments are supported where a valid insurance policy has been issued, and the owner sells the same in a *bona fide* transaction, for the purpose of securing its present value, or where the owner, in a like *bona fide* transaction, assigns such policy as collateral to secure a *bona fide* advance or a valid debt, or some obligation as endorser or surety, and the advance or debt has been paid or the obligation discharged, although in the first case, the assignee has no insurable interest in the life of the insured at the time of the assignment, and in the second, his insurable interest has ceased, and he is an assignee as in the first case, without insurable interest in the life of the assured.

In a recent case, *Scott v. Dickson*, 16 W. N. C. 181, decided by the Supreme Court of Pennsylvania, a policy of life insurance was issued to Dickson, and upon delivery by the agent, Dickson said he wished to transfer the policy to Scott, "the best friend I have in the world." He executed the assignment, notice of it was sent to the company, but Scott was never informed of it. Scott, at the time, was surety on a penal bond given by Dickson, but the liability ceased, and at his decease he was without insurable interest in the life of Dickson. The assignment was supported on the ground that the original insurance was for the benefit of the assignee. The court (Mr. Justice PAXSON) say:

"It requires but a moment's reflection to see that this rule [that the assignment of a policy does not fall upon the cessation of interest] is based upon sound principles. It treats a contract of life insurance not as a contract of indemnity, as in the case of fire and marine insurance, but as a contract to pay a certain sum of money in the event of death. And if a policy failed with the cessation of interest, it would lead to this result: A. is a creditor of B. to the extent of a \$1000, and insures his life to that amount, and continues the policy until he has paid in premiums say, \$1100. If

the policy ceases as soon as the debt is paid, A. loses all he has paid, and in reality is out \$100, although he has received the debt in full. * * * Policies of this sort are not in any sense wagering. It would be to deny a man's right to do what he will with his own to say that he could not insure his life for the benefit of an indigent relative or a friend to whom he felt under obligations. And the fact that he continues to pay the premiums himself, and retains the control of the policy up to the time of his death, leaves no room for speculation, or the improper practices of a few years ago which brought such a scandal upon the life insurance business of this state."

And referring to the case of *Gilbert v. Moore*, *infra*, said: "we do not regard this as within the authority of *Gilbert v. Moore*, for the reason that there is nothing in the facts as set forth in the case stated, from which the deduction can fairly be drawn that this was a wagering policy. On the contrary, there is enough to show that John F. Scott had an insurable interest in the life of Richard Dickson."

In an earlier case, *Cunningham v. Smith*, 70 Penn. St. 450, in which Smith insured his life, and immediately assigned the policy to the defendants, the court say: "Smith's interest in his own life was unquestionable, and if he was willing to insure himself, with their money, and then assign his policy to them there is no principle of law which can prevent such a transaction."

Another recent decision on this question was delivered by the Supreme Judicial Court of Massachusetts in the case of the *Mut. Life Ins. Co. of New York v. Allen*, 138 Mass. 24. This was a bill of interpleader filed by the insurance company to determine whether the wife of the deceased, the beneficiary in the policy, or the assignee, Allen, were entitled to the proceeds, the assignment being made for a sum paid, and the surrender of notes of the assured upon which surrender he had no insurable interest in the life. The court (W. ALLEN, J.) say: "The question is, whether the right to a sum of money payable on the death of a person under a contract in the form of an insurance policy has any special character or quality which renders it less assignable than the right to a sum payable at the death of some person under any other contract or assurance, or than a remainder in real estate expectant on such death. We see nothing in the contract of life insurance which will prevent the assured from selling his right under the contract for his

own advantage, and we are of opinion that an assignment of a policy made by the assured in good faith for the purpose of obtaining its present value, and not as a gaming risk between him and the assignee, or a cover for a contract of insurance between the insurer and the assignee, will pass the equitable interest of the assignor; and that the fact that the assignee has no insurable interest in the life insured is neither conclusive nor *prima facie* evidence that the transaction is illegal. * * * The value and permanency of the interest is material only as bearing upon the question whether the policy is taken out in good faith, and not as a gambling transaction. If valid in its inception it will not be avoided by a cessation of the interest. The mere fact that the assured himself has no interest in the life does not avoid or annul the policy. We think that the second ruling was correct, and that the fact that the assignee had no insurable interest in the life does not avoid the assignment. It is one circumstance to be regarded in determining the character of the transaction, but is not conclusive of its illegality."

The court, referring to *Stevens v. Warren*, 101 Mass. 564, and in effect overruling the case, as to the point in question, say: "The general rule laid down in *Stevens v. Warren*, that no one can have an insurance upon the life of another, unless he has an interest in the continuance of that life, and from which the inference that an assignee of a policy must have an insurable interest, seems to have been drawn, we think, is not strictly accurate or may be misleading. An insurable interest in the assured at the time the policy is taken out is necessary to the validity of the policy, but it is not necessary to the continuance of the insurance that the interest should continue; if the interest should cease, the policy would continue, and the insured would then have an insurance without interest."

The Supreme Court of the United States, in *Connecticut Mut. Life Ins. Co. v. Schaefer*, 94 U. S. 457, in which the policy was payable to a husband and wife, and they were afterwards divorced *à vinculo matrimonii*, the wife, having paid the premiums to the death of the husband, was allowed to collect the insurance, although her insurable interest had ceased at the time of the divorce. And Mr. Justice BRADLEY, speaking for the court said "We do not hesitate to say that a policy taken out in good faith, and valid at its inception, is not avoided by the cessation of the insurable interest, unless such be the necessary effect of the insurance policy itself." And in *Etna Life Ins. Co. v. France*, 94 U. S. 561, where a policy was

taken out for the benefit of a sister, the court sustained the policy, saying that "he had a right to take out a policy on his own life for his sister's benefit, and she had a right to advance him the necessary moneys to do so. As between strangers or persons not thus clearly connected, the transaction would be evidence to go to the jury from which, according to the circumstances of the case, they might or might not infer that it was mere gambling. Any person has a right to procure an insurance on his life and to assign it to another provided it be not done by way of cover for a wager policy."

The rule that an insurable interest in the life of the assured is not essential to constitute a valid assignment of valid life insurance policies has been consistently applied by the courts of New York: *St. John v. American Mutual Life Ins. Co.*, 13 N. Y. 31; *Valton v. National Fund Life Ins. Co.*, 20 N. Y. 32. In a late case in the Court of Appeals, *Olmsted v. Keyes*, 85 N. Y. 593, a policy was issued to Olmsted, as trustee for the wife and children of Keyes, and the wife dying, and Keyes again remarrying, the trustee, at the request of the assured, assigned the policy to the second wife and children. The court say: "The rule as gathered from the authorities is that where one takes out a policy upon his own life as an honest and *bona fide* transaction, and the amount assured is made payable to a person having no interest in the life, or where such a policy is assigned to one having no interest in the life, the beneficiary, in the one case, and the assignee in the other, may hold and enforce the policy, if it was valid in its inception, and the policy was not procured, or the assignment made as a contrivance to circumvent the law against betting, gaming or wagering policies. It follows, therefore, that one may with the consent of the insurer, deal with a valid life policy as he can with any other chose in action, selling it, assigning it, disposing of it and bequeathing it by will; and it has been well said that if he could not do it these life policies would be deprived of a large share of their utility and value."

The like rule has been enforced by the Supreme Court of Rhode Island, in *Clark v. Allen*, 11 R. I. 439, where a policy was assigned upon the surrender of a note for an amount larger than the surrender value of the policy. The court say: "If the danger is not sufficient to avoid the policy when the interest ceases, why should it be sufficient to avoid the assignment to an assignee without interest? The truth is, it is one thing to say that a man may take

insurance upon the life of another for no purpose except as a speculation or bet on the chances of life, and may repeat the act *ad libitum*, and quite another thing to say that he may purchase the policy as a matter of business after it has once been issued under the sanction of law, and is therefore an existing chose in action or right of property which its owner may have the best of reasons for wishing to dispose of. There is in such a purchase, in our opinion, no immorality and no imminent peril to human life. * * * It is said that such an assignment, if permitted, may be used to circumvent the law. That is true if insurance without interest is unlawful, but it does not follow that such an assignment is not to be permitted at all, because, perhaps, it may be abused. Let the abuse, not the *bona fide* use, be condemned and defeated. * * * Perhaps, *Cammack v. Lewis*, 15 Wall. 644, may be found a case of that kind."

The like rule has been enforced in New Jersey in *Trenton Mut. Life & Fire Ins. Co. v. Johnson*, 24 N. J. L. 576; and in *Martin v. Franklin F. Ins. Co.*, 38 Id. 140; in Vermont, in *Fairchild v. Life Ass'n.*, 51 Vt. 613; and in England, in *Dalby v. India & London Life Ass'n.*, 15 C. B. 365; *Law v. London Indisputable Life Policy Co.*, 1 Kay & J. 223. A. insured his life and afterward assigned it to B. for a nominal consideration; B.'s executors assigned the policy to C. for a nominal consideration, and C.'s executors sold it to D., and having a good title, were allowed to enforce the sale: *Ashley v. Ashley*, 3 Sim. 149.

It is also well settled law that an assignment of valid insurance policies will not be enforced by any court where the transaction of assignment itself shows the want of a good and valuable consideration, and the circumstances connected therewith demonstrate that the assignment was obtained simply as a cover for a gambling speculation or a wagering bet upon the chances of the life of another. And in considering the character of the transaction, the insurable interest in the life of the assured is a fact to be considered. The rule was applied in a case in the Supreme Court of the United States, *Warnock v. Davis*, 104 U. S. 775, where a valid policy of life insurance was procured and immediately assigned to a firm, upon an agreement that it should pay all premiums and assessments, and as consideration receive *nine-tenths* of the amount due thereon at his death. The firm paid the fees and assessments, and collected the agreed amount upon the death of the assured. Upon these facts

the court (Mr. Justice FIELD) say : " It was lawful for the association to advance to the assured the sums payable to the insurance company as they became due. It was also lawful for the assured to assign the policy as security for their payment. The assignment was only invalid as a transfer of the policy beyond what was required to refund these sums with interest. To hold it valid for the whole proceeds would be to sanction speculative risks on human life and encourage the evil for which wager policies are condemned. * * * The assignment of a policy to a party not having an insurable interest is as objectionable as the taking out of a policy in his name. Nor is the character changed because it is for a portion merely of the insurance money to the extent that the assignee stipulates for the proceeds of the policy beyond the sum advanced by him, he stands in the position of holding a wager policy. * * * In all cases, there must be a reasonable ground founded upon the relations of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. Otherwise, the contract is a mere wager, by which the party taking the policy is directly interested in the early death of the assured. Such policies have a tendency to create a desire for the event. They are, therefore, independent of any statute on the subject, condemned as being against public policy. The same ground which invalidates the one should invalidate the other—so far at least as to restrict the right of the assignee to the sums actually advanced by him."

The like rule was enforced in *Cammack v. Lewis*, 15 Wall. 644, in which Lewis, being indebted \$70 to Cammack, at the instance of the latter, procured an insurance upon his life for \$3000, and assigned a two-thirds interest in the same to Lewis, and also gave him a note of \$3000, confessedly without consideration. Upon Cammack's death, which occurred after the payment of one premium, Lewis paid \$1000 to the widow and she brought an action to recover the remainder. The court (Mr. Justice MILLER) described the transaction so far as Cammack was concerned, as "a sheer wagering policy, and probably a fraud on the insurance company. To procure a policy for \$3000 to cover a debt of \$70, is of itself a mere wager. The disproportion between the real interest of the creditor and the amount to be received by him deprives it of all pretence to be a *bona fide* effort to secure the debt, and the strength of this fact is not diminished by the fact that Cammack

was to get \$2000 out of the \$3000; nor is it weakened by the fact that the policy was taken out in the name of Lewis, and assigned by him to Cammack." And the assignee was only allowed to retain the amount of the debt and the premium paid.

The latest case in Pennsylvania, *Gilbert v. Moose*, 104 Penn. St. 74, in which the rule announced in *Pritchett v. Ins. Co.*, 3 Yeates 458, decided in 1803, and recognised in later cases, *Edgell v. McLaughlin*, 6 Whart. 176; *Adams v. Ins. Co.*, 1 Rawle 97, was followed, arose from a transaction which stamped it as a mere speculation. Gilbert insured his life for \$2000, naming as beneficiary one Jacobs, who had no insurable interest in his life; and he assigned the policy to Gilbert for \$28, who, after payment of one premium, collected the money due on the policy, Moose having died. His administrators were allowed to recover the money, less assessments, the policy being held valid. The court (GORDON, J.) say: "We do not overlook the fact that the status of Jacobs (the first assignee), is the point of this case, for if he was the proper and lawful beneficiary, then even were Gilbert without right, the plaintiffs could not recover, for proceeds of the policy would belong to Jacobs, and on the other hand, if his claim was not good he had nothing to assign to the defendant. But as a beneficiary merely, having no interest in the life, it seems to us very clear that he could lawfully have no interest in the policy. * * * Nor can we see that did the defendant's case rest on an assignment from Moose to himself, how it would be bettered in the least. The reserved point alleges that Gilbert took the assignment for the purposes of speculation, and of this there can be no doubt, for, for what other purpose could it have been taken? But speculation, on what? The life of Moose, and the sooner that was determined, the better the speculation. If there is any difference between this and an original wager policy, I confess I cannot see it."

The like rule was enforced in Indiana, in *Franklin Life Ins. Co. v. Hazzard*, 41 Ind. 116, where a policy for \$3000 was assigned for \$20. The policy became payable shortly afterwards, the assignee having paid but one premium. The Supreme Court say: "Life insurance policies are assignable; but, in our opinion, they are not assignable to one who buys merely as matter of speculation without interest in the life of the assured." In *Missouri Valley Life Ins. Co.*, 18 Kans. 93, the Supreme Court of Kansas, in a case where a policy of insurance procured by one Haynes, for \$2000,

was assigned to Sturges, who was without insurable interest in his life, the assured dying in less than a year after the assignment, say : " If the assignment from Haynes to Sturges were to be upheld as valid under the law, it would be virtually saying that the law authorizes mere wagering speculations, mere mercenary traffic concerning human life, and it would be opening the door wide and inviting to enter the most shocking crimes." See *State v. Winner*, 17 Kans. 298. The like rule has been enforced in Maine, in *Mitchell v. Union Life Ins. Co.*, 45 Me. 104 ; in Missouri, in *Singleton v. St. Louis Life Ins. Co.*, 66 Mo. 63 ; and in the United States Circuit, District of Missouri, by Judges DILLON and TREAT, in *Swick v. Home Life Ins. Co.*, 2 Dill. 161 ; and in Illinois, in *Guardian Mut. Life Ins. Co. v. Hogan*, 80 Ill. 35. In *Johnson v. Van Epps*, 14 Ill. App. 201, the court (PILLSBURY, J.,) say : " Whether a contract of insurance is void, being within the prohibition of the law against gambling, depends not so much upon the extent or character of the interest or the want of interest in such beneficiary, as it does upon the intention of the parties in procuring such insurance." See, also, *Langdon v. Union Mut. Ins. Co.*, 22 Am. L. Reg. (N. S.) 385, and note.

It is an equitable rule, however, that assignments of valid life insurance policies, although the circumstances attending such assignment are such that a court will refuse to enforce the same for the whole amount of the policy, for the reason that the transaction is, on its face, a mere speculation or gambling wager upon the life of the assured, are yet held valid in favor of assignees as to all sums actually loaned, with interest, and premiums and assessments paid by the assignee to preserve the vitality of the policy : *Warnock v. Davis*, 104 U. S. 775 ; *Knickerbocker Life Ins. Co. v. Weitz*, 99 Mass. 157 ; *Cammack v. Lewis*, 15 Wall. 643 ; *Harley v. Heist*, 86 Ind. 196. And this equitable right was enforced in favor of an assignee holding policies of life insurance as collateral in a transaction voidable for fraud : *In re Leslie*, L. R., 23 Ch. D. 552. And also where the assignment was partly void : *Scobey v. Waters*, 10 Lea 551.

And in other cases, a lien can be acquired upon policies by the payment of premiums under a contract with the beneficial owner, or where persons have advanced money to trustees for that purpose : *Clack v. Holland*, 19 Beav. 262 ; *Todd v. Moorehouse*, L. R., 19 Eq. 69.

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